



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0665]

RIN 1625-AA00

Safety Zone; Great Egg Harbor Bay, Marmora, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones on the waters of Great Egg Harbor Bay in Marmora, NJ. The first safety zone includes all waters within 250 feet of vessel and machinery conducting demolition operations on the remaining portions of the Route 9, Beesley Point Bridge bascule span. This safety zone is necessary to provide for the safety of life on navigable waters during the demolition and will re-route vessel traffic through an alternate channel to facilitate heavy marine equipment operating in the main navigational channel to remove the bascule span of the bridge and will be in place throughout the entire duration of the demolition work.

The second safety zone includes all waters within 500 yards of a blasting vessel and equipment being used to conduct bridge pile blasting operations, which is the final phase of the demolition of the Route 9, Beesley Point Bridge bascule span. This safety zone will only be enforced during times of explosive detonation. The safety zone will temporarily restrict vessel traffic from transiting or anchoring in a portion of the Great Egg Harbor Bay while pile blasting

and removal operations are being conducted to facilitate the removal of bridge piles from the demolished Route 9, Beesley Point Bridge.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through October 20, 2016. For the purposes of enforcement, actual notice will be used from August 22, 2016, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The second safety zone will be enforced on or about October 1, 2016, only during times of explosive detonation.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to, type USCG-2016-0665 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Marine Science Technician First Class Tom Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215) 271-4889, e-mail Tom.J.Simkins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background Information and Regulatory History

In June of 2013, demolition work began on the Route 9, Beesley Point Bridge between Somers Point and Marmora, NJ. Route 52 Construction, the company performing this demolition

work, has completed all demolition of the bridge and piles except the portion of the bridge which has the bascule span opening for the navigational channel.

During this phase of demolition heavy marine equipment, to include a large crane and barge, will be used to remove the large bascule span arms and what is left of the bridge tender house and roadway. The barge and crane must be placed in the navigational channel to properly secure and remove what remains of the bridge.

All piles from the demolished bridge south of the bascule span have been removed. All piles north of the bascule span have been removed with the exception of four piles, which are attached to the bascule span for support. The Coast Guard has reviewed Route 52 Construction's plan to move the main navigational channel 100 feet south of the most southern portion of the remaining bridge to allow vessel traffic to safely pass during the demolition of the bascule span. Once the bascule span is removed, the piles will be removed and the bridge will be completely removed from the waterway.

The removal of the remaining piles, which are secured to the sea floor bed, will be completed by using explosives, after which the piles and debris will be removed. The Captain of the Port, Delaware Bay, has determined that potential hazards associated with pile blasting and removal operations, beginning on or about October 1, 2016, will be a safety concern for anyone operating within 500 yards of pile blasting and removal operations during times of explosive detonation.

The purpose of this rule is to promote maritime safety and protect vessels from the hazards of bridge demolition and pile blasting operations, and to maintain safety of navigation in the Great Egg Harbor Bay, in the vicinity of the Route 9, Beesley Point Bridge. The rule will provide for a clear transit route for vessels, provide a safety buffer around the crane and barge while

demolition operations are conducted, and provide a safety buffer around the blasting vessel during times of explosive detonation.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this event were not received by the Coast Guard until August 18, 2016, and the demolition work will begin August 22, 2016. The first safety zone is required by August 22, 2016, for the demolition of the remaining portion of the bridge, and it is impracticable to publish an NPRM and consider comments before that date. Allowing this event to go forward without a safety zone in place would expose mariners and the public to unnecessary dangers associated with bridge demolition operations. The crane and barge must be placed in the main navigational channel to facilitate the removal of the remaining portion of the bridge. Therefore, it is imperative that there is a clear transit route and safety zone around the demolition location.

Furthermore, the second safety zone is needed for blasting operations which will begin on or about October 1, 2016. It is impracticable to publish an NPRM and consider comments due to the short window of time until the operation begins. Allowing this event to go forward without a safety zone in place would expose mariners and the public to unnecessary dangers associated with pile blasting operations.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good

cause exists for making it effective less than 30 days after publication in the **Federal Register** for the reasons we stated for not publishing an NPRM. The Coast Guard expects minimal impact to vessels transiting through the alternate channel. Vessels will be able to safely transit through the alternate channel at all times, except during times of explosive detonation. The alternate channel will have the same horizontal clearance and no vertical clearance restriction, similar to the current navigational channel. Furthermore, notification for the first safety zone will be made via marine safety broadcast using VHF-FM channel 16 and through the Local Notice to Mariners.

For the second safety zone, the pile blasting operation, two blasting events will occur on consecutive days to complete both piers. Notification for the second safety zone will be a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone maintained by the contractor's safety boats during time of explosive detonations, a 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with all other required company, Local, State, and Federal signage.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Delaware Bay has determined that potential hazards are associated with demolition and pile blasting operations of the Route 9, Beesley Point Bridge, over the Great Egg Harbor Bay, in Marmora, NJ from August 22, 2016, through October 20, 2016. The rule will provide for a clear transit route for vessels, provide a safety buffer around the crane and barge while demolition operations are conducted, and provide a safety buffer around the blasting vessel during times of explosive detonation.

The rule will minimally impact vessels transiting through the Great Egg Harbor Bay navigational channel, in the vicinity of the Route 9, Beesley Point Bridge because vessels will be able to safely transit through an adequate alternate channel, except during times of explosive detonation. The alternate channel will have the same horizontal clearance and no vertical clearance restriction, similar to the current navigational channel.

IV. Discussion of the Rule

On August 22, 2016, demolition work will begin on the remaining portion of the Route 9, Beesley Point Bridge, over the Great Egg Harbor Bay, in Marmora, NJ. The Captain of the Port, Delaware Bay, has determined that the hazards associated with demolition and pile blasting operations require two separate safety zones. The first safety zone will encompass all the navigable waters within 250 feet of the marine equipment and demolition operation. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or his designated representative. Vessels wishing to transit the waterway may navigate approximately 100 feet south of the main navigational channel to the alternate navigational channel to safely pass the demolition equipment. An adequate alternate navigational channel will be established 100 feet south of the most southern portion of the bascule span which will have the a horizontal clearance of 60 feet and an unlimited vertical clearance. The alternate navigational channel will be clearly marked with red and green buoys; during the evening the buoys will be lit with red and green lights to signify the channel. The alternate channel will have the same horizontal clearance and no vertical clearance restrictions; the State of New Jersey has marked the channel with best water for passage of vessels. Vessels are requested to contact the demolition crew via VHF-FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the alternate navigational channel.

The second safety zone will be enforced starting on or about October 1, 2016, only during times of explosive detonation, and encompasses all navigable waters in the Great Egg Harbor Bay within 500 yards of vessels and machinery being used to conduct pile blasting and removal operations. The duration of the enforcement of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while explosive detonation occurs. There will be two blasting events occurring on consecutive days to complete both piers. Actual dates and times of explosive detonation will be published with a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone maintained by the contractors safety boats, a 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with warning signs.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or his designated representative. No vessels may transit through the safety zone during times of explosives detonation. During pile blasting explosive detonation, vessels will be required to maintain a 500-yard distance from vessels and equipment used to conduct pile blasting and removal operations. This 500 yard radius will be secured by two contractor safety boats in the adjacent waterways. For safety reasons associated with the blasting operation, during times of explosive detonation the alternate navigational channel will be closed. At all other times vessels may transit through the established alternate navigational channel approximately 100 feet south of the southernmost remaining pile of the Route 9, Beesley Point Bridge.

Signs will be posted to identify the blast area and warning signs will be posted with the schedule of the warning signals. The contractor will verify that all vessels and persons are clear of safety zone 10 minutes prior to the scheduled shot time and will remain secured until the blaster gives the “All Clear”. All persons involved with securing the blast zone will be equipped with marine radios. A 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. After every explosive detonation the blasting vessels will give the “All Clear” when the alternate channel is clear for vessels to transit.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This finding is based on the limited size of the zone and the availability for vessels to transit freely through the alternate channel, around the first safety zone. Vessels will only be affected during times of explosive detonation, where the second safety zone will be enforced. The second safety zone is of a limited size and duration as blasting will occur only for a consecutive

two day period. In addition, the zones will be well publicized to allow mariners to make alternative plans for transiting the affected area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

It is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. In addition, vessels may transit around the zone through an alternate channel, except during time of explosive detonation.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory

Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal

agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves two safety zones, the first encompassing all the waters within 250 feet of demolition operations on the remaining portion of the Route 9, Beesley Point Bridge, over Great Egg Harbor Bay, in Marmora, NJ and the second encompassing all navigable waters in the Great Egg Harbor Bay within 500 yards of vessels and machinery being used to conduct pile blasting and removal operations during times of explosive detonation. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-0665, to read as follows:

§ 165.T05-0665 Safety Zone; Great Egg Harbor Bay, Marmora, NJ.

(a) **Regulated areas.** The following areas are safety zones:

(1) **Bascule span demolition zone.** All waters within 250 feet of vessels and machinery conducting demolition operations in Great Egg Harbor Bay, in the vicinity of Route 9, Beesley Point Bridge bascule span, in Marmora, NJ.

(2) **Bridge pile blasting zone.** All waters within 500 yards of the blasting vessel and equipment conducting pile blasting operations, in Great Egg Harbor Bay, in the vicinity of Route 9, Beesley Point Bridge, in Marmora, NJ.

(b) **Regulations.** The general safety zone regulations in § 165.23 apply to the safety zones created by this temporary section, § 165.T05-0665.

(1) All vessels and persons are prohibited from entering into or moving within the safety zones described in paragraph (a) of this section while they are subject to enforcement, unless

authorized by the Captain of the Port, Delaware Bay, or by his designated representative.

(2) Persons or vessels seeking to enter or pass through the safety zones must contact the Captain of the Port, Delaware Bay, or his designated representative to seek permission to transit the area. The Captain of the Port, Delaware Bay can be contacted at telephone number 215-271-4807 or on Marine Band Radio VHF Channel 16 (156.8 MHz).

(3) Vessels may freely transit through the marked alternate channel, approximately 100 feet south of the most southern portion of the bascule span. The alternate channel has a horizontal clearance of 60 feet and unlimited vertical clearance. The alternate channel will be marked with red and green buoys and the buoys will be lit at night. Vessels are requested to contact the demolition crew via VHF-FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the alternate navigational channel.

(4) No vessels may transit through the safety zone described in paragraph (a)(2) of this section during times of explosives detonation. During pile blasting detonation, vessels will be required to maintain a 500 yard distance from the blasting vessel and equipment. Within the 500 yards is the alternate channel, approximately 100 feet south of the most southern portion of the bascule span. Therefore no vessel may transit the alternate channel during times of explosive detonation. Actual dates and times of explosive detonation will be announced with a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone maintained by the contractors safety boats, 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with all other required signage.

(5) This section applies to all vessels except those engaged in the following operations:

enforcing laws, servicing aids to navigation, and emergency response vessels.

(c) Definitions. As used in this section:

Captain of the Port Delaware Bay means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This first safety zone will be enforced from August 22, 2016, through October 20, 2016, unless cancelled earlier by the Captain of the Port. The second safety zone for pile blasting will only be enforced during times of explosive detonation. Pile Blasting operations are schedule to begin on or about October 1, 2016. Actual dates and times of

explosive detonation will be published with a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone maintained by the contractors safety boats, 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with warning signs.

Dated: August 22, 2016.

Benjamin A. Cooper,
Captain, U.S. Coast Guard,
Captain of the Port Delaware Bay.

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